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09/876,912	06/08/2001	Ronald Magee	5028B	1113

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Milliken & Company  
P.O. Box 1927  
Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/876,912

Applicant(s)

MAGEE ET AL.

Examiner

Cheryl Juska

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-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,7,9-11,15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,9-11,15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment B, submitted as Paper No. 8 on June 30, 2003, has been entered. Claims 2, 6, 8, and 12-14 have been cancelled, while the remaining pending claims 1, 3-5, 7, 9-11, 15, and 16 have been amended as requested.

2. Amendment B is sufficient to withdraw the objection to the specification and the 112, 2<sup>nd</sup> rejections set forth in sections 1-8 of the last Office Action. Additionally, said amendment is sufficient to withdraw the 102 rejection of claims 2, 6-8, 11-14, and 16 by the cited Shoshkes reference as set forth in section 10 of the last Office Action. Also, the 102 rejections of claims 12-14 and 16 by Blumenau and Stoyles, as set forth in sections 11 and 12, are rendered moot by Amendment B. The 103 rejection of claims 2, 6-11 and 15 over Blumenau in view of Shoshkes, as set forth in section 14 of the last Office Action, is hereby withdrawn. Furthermore, the rejection of claims 9 and 10 over Shoshkes in view of Blumenau, as set forth in section 15, is hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1 and 5 stand rejected under 102(b) as being anticipated by Shoshkes, *Contract Carpeting*, pages 32-46, as set forth in section 10 of the last Office Action.

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Applicant has amended claim 1 to delete the limitations to the coloring or dyeing of the carpet yarn. Hence, the claim is now broader in this aspect. Additionally, the claim has been amended to limit the process to (a) weaving a woven carpet substrate with a carpet yarn, (b) dyeing or printing a design or pattern on the woven substrate by application of dye at discrete locations across said substrate, and (c) cutting or forming the dyed or printed substrate into a finished product.

As discussed in the last Office Action, Shoshkes teaches various known processes for coloring carpet substrates including dyeing or printing after weaving, such as by piece dyeing, cross-dyeing, and carpet printing (page 32). The cross-dyeing or differential dyeing method “uses fibers treated to accept or reject certain dyes.” The printing method includes applying “a random dot or pattern effect by spattering the carpet with one or two additional colors” (page 32). As noted previously, the dyed or printed carpet is inherently cut and/or formed into a finished product for commercial sale, such as broadloom carpet, carpet tiles, area rugs, and floor mats. Thus, claims 1 and 5 stand rejected as being anticipated by the Shoshkes reference.

5. Claims 1 and 5 are rejected under 102(e) as being anticipated by US 2002/0034607 issued to Stoyles.

Stoyles teaches a method of printing designs or patterns on carpet substrates (abstract). The carpet may be tufted or fusion bonded carpet (section [0064]). As noted previously, a tufted carpet meets the limitation of “weaving a woven carpet substrate with a carpet yarn” in that yarns are tufted into a woven primary backing. The carpet substrates are printed or dyed and then cut and formed into finished products or the substrate may first be cut and then dyed and printed (sections [0055] and [0057]). Thus, claims 1 and 5 are anticipated.

***Claim Rejections - 35 USC § 103***

6. Claims 3, 4, and 15 stand rejected under 35 USC 103(a) as being unpatentable over the cited Shoshkes reference in view of US 4,188,216 issued to Blumenau, as set forth in section 15 of the last Office Action.

The amendments to claims 3 and 15 do not change the scope of the claim, but rather merely rewrite the claims in independent form and correct 112 issues. Hence, said claims stand rejected for the reasons of record.

7. Additionally, claim 16, which has been amended to depend from claim 15, is rejected under 35 USC 103(a) as being unpatentable over the cited Shoshkes reference in view of the cited Blumenau reference, for the reasons of record.

8. Claims 1 and 3-5 stand rejected under 35 USC 103(a) as being unpatentable over the cited Blumenau reference in view of the cited Shoshkes reference, as set forth in section 14 of the last Office Action.

9. Claims 3, 4, 15, and 16 are rejected under 35 USC 103(a) as being unpatentable over the cited Stoyles reference in view of US 4,188,216 issued to Blumenau.

Although Stoyles does not teach the dpi of the applied design and the carpet, it is argued that selection of a design dpi with respect to the dpi of a carpet would require only routine skill in the art as said selection would be based upon a balance of carpet density vs. pattern density, or the overall desired carpet quality. Thus, it would have been obvious to one skilled in the art to select a print pattern dpi which is higher than the carpet dpi since Blumenau teaches that it is desirable to produce a fine, detailed pattern. Therefore, claims 3, 4, 15, and 16 are rejected as being obvious over the cited prior art.

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10. Claims 7 and 9-11 are rejected under 35 USC 103(a) as being unpatentable over the cited Shoshkes reference in view of WO/19557 issued to Scott et al. and Blumenhaus.

Claims 7 and 9-11 are rejected under 35 USC 103(a) as being unpatentable over the cited Blumenhaus reference in view of WO/19557 issued to Scott et al.

Claims 7 and 9-11 are rejected under 35 USC 103(a) as being unpatentable over the cited Stoyles reference in view of WO/19557 issued to Scott et al. and Blumenhaus.

Shoshkes, Blumenhaus, and Stoyles do not teach printing of a woven face carpet having knuckles and interstitial depressions. However, Scott teaches woven face carpets as alternatives to pile carpets (abstract; page 2, line 15-page 3, line 2). Blumenhaus teaches the printing invention is suited for pile fabrics and other textile fabrics, such as upholstery, sheeting, and drapery fabrics, which are well-known in the art to be woven fabrics, which inherently have knuckles and depressions due to the warp and weft yarns being interwoven with each other. Thus, it would have been obvious to print the woven face carpet substrates, as disclosed by Scott, according to the processes of Shoshkes, Blumenhaus, and Stoyles, motivated by the teachings of Blumenhaus for printing woven fabrics.

### ***Response to Arguments***

11. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

12. Applicant traverses the above 102 rejection by Shoshkes by arguing that said reference does not disclose printing woven carpets as is presently claimed (Amendment, page 10, 1<sup>st</sup> paragraph). In response, it is reiterated that Shoshkes teaches methods of dyeing and printing

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carpets “after weaving” (Shoshkes, page 32, col. 2). Hence, it is asserted that applicant’s claim limitation to a printing a woven carpet substrate is anticipated by the Shoshkes reference.

13. Additionally, it appears applicant is attempting to limit the term woven carpet to non-pile woven carpets and/or woven pile carpets. However, applicant’s own specification teaches woven carpet substrates include woven non-pile, woven pile, and tufted pile carpets. See specification, page 1, line 19–page 2, line 2; page 13, lines 15–21; page 18, lines 17–22’ and page 22, lines 5–9). Thus, the teachings of Shoshkes clearly fall within the scope of applicant’s claims.

14. With respect to the rejection over Blumenau in view of Shoshkes, applicant asserts improper hindsight reasoning by the examiner in constructing the rejection (Amendment, pages 11–12). In response, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant’s disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case, it is reiterated that it would have been obvious to one skilled in the art to employ the printing process of Blumenau on the woven carpet substrates taught by Shoshkes, in order to expand the number of applications of the Blumenau invention and in order to produce less expensive woven carpets (i.e., by printing a design thereon rather than weaving said design into the carpet).

15. Applicant also traverses the rejection of Blumenau in view of Shoshkes by asserting that they actually teach away from the present invention in that the combination of references is

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“actually contrary to the accepted wisdom in the art reflected by Blumenhaus and Shoshkes”

(Amendment, page 12, 1<sup>st</sup> paragraph). Applicant supports this assertion by noting the Blumenhaus invention is “limited exclusively to flat materials” which would exclude an woven fabric surface that has knuckles and depressions. The examiner respectfully disagrees with applicant’s interpretation of Blumenhaus. Specifically, the passage in Blumenhaus applicant refers to is as follows:

While the invention has applicability to print dyeing of all types of materials, textile fabric and flat piece materials such as, for example, upholstery fabric, sheets, drapery, flat work, formica, ceramics, china, and the like, the invention is particularly applicable to print dyeing of pile fabric materials, such as, carpeting and rugs, wherein the dye penetrates the surface of the face yarns and a continuous image is formed on the surface of the pile yarns in a continuous print process.

This passage clearly teaches the invention is suited to flat or planar fabrics and materials. While china, formica, or ceramic materials may have a smooth flat surface, fabrics inherently are less smooth and flat. The nature of a fabric (i.e., a fibrous material) inherently produces a somewhat non-smooth or flat surface. The degree of non-flatness depends on the size of the fiber or yarn employed. Woven fabrics, such as upholstery fabric, can have rather pronounced knuckles and depressions, while woven sheeting is more likely to have a subtle difference between knuckles and depression due to the fiber yarns employed. Thus, it is the examiner’s position that Blumenhaus’s recitation to flat piece materials, is, first, a reference to planar materials, and secondly, a matter of relativity. Additionally, it is reiterated that Blumenhaus explicitly teaches printing pile fabrics which inherently do not have “flat” surfaces due to the pile yarns. Thus, applicant’s argument is found unpersuasive.

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***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

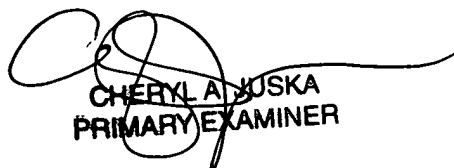
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj  
September 23, 2003

  
**CHERYL A. JUSKA**  
**PRIMARY EXAMINER**